

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ELIZABETH DENSON and KRISTOPHER ANTLE, Individually and on behalf of all others similarly situated, Plaintiffs, v. ELEPHANT INSURANCE SERVICES, LLC, Defendant.	Civil Action No. 3:22-cv-00022
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**MEMORANDUM IN SUPPORT OF CONSENT MOTION TO CLARIFY
SCOPE OF FLSA SETTLEMENT RELEASE FOR OPT-IN PLAINTIFFS**

COME NOW, Plaintiffs Elizabeth Denson and Kristopher Antle, together with Defendant Elephant Insurance Services, LLC (“Elephant”) (collectively, the “Parties”), by counsel, and hereby move the Court to enter the attached proposed Order clarifying the scope of the settlement release for the Opt-In Plaintiffs in this matter.

On July 18, 2022, the Court approved the Parties’ Settlement Agreement in this matter. *See* ECF No. 28. Consistent with that Agreement, the Plaintiffs disseminated notice shortly thereafter and have been collecting releases and responding to settlement inquiries. Through that process, it became apparent that the scope of the release in the Settlement Agreement could be viewed as being inconsistent with the scope of the settlement and the Parties’ intended release. That is to say, the Parties only intended for individuals to release claims associated with their tenure as a “Sales Agent” within the relevant timeframe, and not to release time associated with a putative plaintiff’s tenure with Elephant as non-“Sales Agent” within the relevant timeframe. As part of the settlement process, Elephant provided Plaintiffs’ counsel with data relating to the 98 putative Plaintiffs which was confined to each such Plaintiff’s tenure as a “Sales Agent” within

the relevant timeframe, and excluded data for any such Plaintiff's non-"Sales Agent" employment within the relevant timeframe. The Consideration to be paid to each Opt-In Plaintiff correlates to that Opt-In Plaintiff's tenure as a "Sales Agent" within the relevant timeframe only.

Thus, the Parties file this Consent Motion to clarify that the release contained in the Settlement Agreement shall only apply to time that each Opt-In Plaintiff spent as an Elephant "Sales Agent," as reflected in the data provided by Elephant to Plaintiffs' counsel.

The release in paragraph 8 of the Settlement Agreement does not release any claims an Opt-In Plaintiff may have in connection with any period of employment with Elephant that any such Opt-In Plaintiff was listed as a non-"Sales Agent."

The Parties believe this clarification is necessary inasmuch as an FLSA settlement must be fair and reasonable. *Patel v. Barot*, 15 F. Supp. 3d 648, 654 (E.D. Va. 2014) (citing *Lynn Food Stores, Inc. v. U.S. Dep't of Labor*, 679 F.2d 1350, 1355 (11th Cir. 1982)). The settlement was negotiated based off the 98 putative Plaintiffs' tenures as "Sales Agent" in the data provided by Elephant to Plaintiffs' counsel, and settlement allocations were derived from same. It would be neither fair nor reasonable for the released claims to extend to periods where an individual was not listed by Elephant as a "Sales Agent". All other terms of the Settlement Agreement remain in place.

WHEREFORE, the Parties respectfully request that the Court grant the Parties' request for the aforementioned clarification to the Settlement Agreement and enter the Parties' proposed Order.

Date: August 17, 2022

Respectfully submitted,

<p>By: <u>/s/ Zev H. Antell</u> Harris D. Butler, III (VSB No. 26483) Craig J. Curwood (VSB No. 43975) Zev H. Antell (VSB No. 74634) BUTLER CURWOOD, PLC 140 Virginia Street, Suite 302 Richmond, Virginia 23219 Telephone: (804) 648-4848 Facsimile: (804) 237-0413 Email: harris@butlercurwood.com craig@butlercurwood.com zev@butlercurwood.com</p> <p><i>Attorneys in Charge for Representative Plaintiffs and Putative Collective/Class Members</i></p>	<p><u>/s/ Lindsey A. Strachan</u> Steven D. Brown (VSB No. 42511) Lindsey A. Strachan (VSB No. 84506) Whitney E. Nelson (VSB No. 95911) Isler Dare P.C. 1111 East Main Street, Suite 1605 Richmond, Virginia 23219 Telephone: (804) 489-5500 Facsimile: (804) 234-8234 Email: sbrown@islerdare.com Email: lstrachan@islerdare.com Email: wnelson@islerdare.com</p> <p><i>Counsel for Defendant Elephant Insurance Services, LLC</i></p>
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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2022, I will electronically file the foregoing document with the Clerk of the Court, using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

/s/ Zev H. Antell
Zev H. Antell (VSB No. 74634)
Butler Curwood, PLC
140 Virginia Street, Suite 302
Richmond, Virginia 23219
Telephone: (804) 648-4848
Facsimile: (804) 237-0413
Email: zev@butlercurwood.com